IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 7TH DECEMBER 2006 / 16TH AGRAHAYANA 1928

Crl.MC.No. 3983 of 2006()

CC.187/2006 of JUDL.MAGISTRATE OF FIRST CLASS COURT, TALIPARAMBA

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PETITIONER: 10TH ACCUSED

V.SAMEER, S/O.ABOOBACKER,
ZEENATH MANZIL, UMMANCHIRA P.O.,
THOTTUMMAL VIA., THALASSERY.

BY ADV. SRI.T.M.ABDUL LATHEEF
SRI.V.R.NASAR

RESPONDENTS: COMPLAINANT AND STATE

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1. SUB INSPECTOR OF POLICE,
SREEKANDAPURAM.

2. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.A.AKBAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 07/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.NO.3983 OF 2006

Dated this the 7th day of December, 2006.

ORDER

The petitioner is the 10th accused in a prosecution, inter alia, under Sections 452, 324 & 363 read with 149 I.P.C. The alleged incident had taken place as early as on 25.07.2000. Investigation was completed. Charge sheet was filed. The petitioner was not available for trial along with some other co-accused. Those accused who appeared before the learned Magistrate - Accused 2, 6 & 9 stood trial. Evidence was adduced against them. They were ultimately found not guilty and acquitted by the learned Magistrate for the reason that the prosecution has not succeeded in procuring the presence of the witnesses, who were to unfold the crucial part of the prosecution case. Conceding the benefit of such inability of the prosecution to them, they were acquitted.

2. The petitioner who had not appeared before the learned Magistrate at the earliest, has now come before this Court with a prayer that the extraordinary inherent jurisdiction available to this Court under Section 482 Cr.P.C may be invoked to quash the proceedings against him.

3. I find no rhyme or reason in the request. That the co-accused who had entered appearance were found entitled to the benefit or advantage of the inability of the prosecution to procure the presence of necessary witnesses in such trial, cannot by any stretch of

imagination clothe the petitioner with any right to claim extension of that privilege to him also. I have no reason to assume that the prosecution will not be able to procure the presence of crucial and vital witnesses in the trial against the petitioner. The mere acquittal of the co-accused cannot justify invocation of the powers under Section 482 Cr.P.C and quashing of proceedings against the absconding co-accused, it is trite and the law is declared unambiguously in the decision of the Full Bench in **Moosa v. Sub Inspector of Police** [2006(1) KLT 552].

4. I do not in these circumstances find any reason to justify the invocation of powers under Section 482 Cr.P.C. This Crl.M.C is, in these circumstances, dismissed. The learned counsel for the petitioner alternatively prays that the learned Magistrate may be directed to dispose of the case expeditiously, as the pendency of the case is causing untold hardship and difficulties to him. This is an old matter, though it bears a new number and I have no hesitation to agree with the learned counsel for the petitioner that the learned Magistrate must make every endeavour to dispose of the case as expeditiously as possible.

5. This Crl.M.C is, hence dismissed subject to the above observations.

R.BASANT
JUDGE

rtr/